

CASE 4-31830C/C1/SKB1364

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January 26, 2004  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

Art Unit: 1648

MALCOLM RICHARD BOYD

Examiner: Mosher, M.

APPLICATION NO: 09/884,715

FILED: JUNE 19, 2001

FOR: NUCLEOSIDE ANALOGS IN COMBINATION THERAPY OF  
HERPES SIMPLEX INFECTIONS

MS PETITION  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.78(a)(3) TO OBTAIN AN UNINTENTIONALLY  
DELAYED CLAIM OF PRIORITY UNDER 35 U.S.C. §120 and/or §365(c)

Sir:

Applicants hereby respectfully file this petition pursuant to 37 CFR 1.78(a)(3) in order to obtain the benefit of the filing date of PCT/GB97/00226 under 35 U.S.C. §120 and/or §365(c).

As is clear from the enclosed copy of the Declaration which accompanied the transmittal papers at the time the instant application was filed Applicants intended to claim the benefit of International Application No. PCT/GB97/00226, filed January 24, 1997, as well as GB 9601544.1 filed January 26, 1996, and U.S. Application No. 09/117,154, filed July 28, 1998. Unfortunately, however, only U.S. Application No. 09/117,154 was explicitly reflected in the cross-reference that was introduced by the Preliminary Amendment which accompanied the transmittal papers at the time the instant application was filed. Accordingly, in the Amendment which is being concurrently filed, a copy of which is enclosed, the "original" cross-reference has been replaced by a "new" cross-reference which explicitly reflects the fact that Applicants claim priority from International Application No. PCT/GB97/00226, filed January 24, 1997, and U.S. Application No. 09/117,154, filed July 28, 1998.

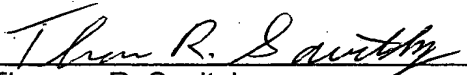
Please charge the \$1330 surcharge fee required by 37 CFR 1.17(t) and any additional fees that may be required to Deposit Account No. 19-0134 in the name of Novartis. An additional copy of this Petition is enclosed.

In accordance with 37 CFR 1.78(a)(3)(iii), it is respectfully submitted that the entire delay between the date the claim was due under paragraph (a)(2)(ii), viz., October 19, 2001, and the date that the claim was filed, viz., the date of the enclosed Amendment, i.e., January 26, 2004, was unintentional.

In view of the foregoing, Applicants respectfully request that the instant Petition be granted.

Respectfully submitted,

Novartis  
Corporate Intellectual Property  
One Health Plaza, Building 430  
East Hanover, NJ 07936-1080

  
Thomas R. Savitsky  
Attorney for Applicant  
Reg. No. 31,661  
(862) 778-7909

Date: January 26, 2004

Encls.: Copy of Declaration  
Copy of Amendment  
Additional copy of this Petition  
Postcard